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UNITED STATES DISTRICT COURT
11
DISTRICT OF NEVADA

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13 JPMORGAN CHASE BANK, N.A., a)
national banking association, For Itself) CASE NO. 2:15-cv-02159-RFB-GWF
14 and As Successor By Merger To Chase)
Home Finance LLC,)
15 Plaintiff,) STIPULATION AND ORDER STAYING
16 v.) LITIGATION
17 LAS VEGAS DEVELOPMENT)
GROUP, LLC, a Nevada limited)
liability company; HACIENDA)
NORTH HOMEOWNERS')
ASSOCIATION, a Nevada non-profit)
corporation,)
21 Defendants.)
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24 Plaintiff JPMorgan Chase Bank, N.A., a National Banking Association, for
25 itself and as Successor by Merger to Chase Home Finance LLC (“Chase”), Defendant
26 Las Vegas Development Group, LLC (“LVDG”), and Defendant Hacienda North
27 Homeowners’ Association (the “HOA”) (collectively, the “Parties”) hereby stipulate
28 and agree as follows:

1 1. This is a quiet title action arising from a homeowners' association
2 foreclosure sale (the "Sale") of residential property located at 5272 Fire Night Ave,
3 Las Vegas, NV 89122 (the "Property").

4 2. Absolute Collection Services, LLC, as agent for the HOA, conducted the
5 Sale pursuant to NRS Chapter 116.

6 3. Chase alleges it is the beneficiary of a deed of trust recorded against the
7 Property. Chase contends that the deed of trust survived the Sale or, alternatively,
8 that the Sale was void.

9 4. LVDG contends the Sale extinguished the deed of trust as a matter of
10 law.

11 5. Chase argues, among other things, that the notice provisions of NRS
12 Chapter 116 are facially unconstitutional under the Due Process Clause of the
13 Fourteenth Amendment.

14 6. In *Bourne Valley Court Trust v. Wells Fargo Bank, NA*, 832 F.3d 1154
15 (9th Cir. 2016), the Ninth Circuit Court of Appeals accepted this argument and held
16 that Chapter 116's notice provisions facially violate due process by requiring
17 purported junior lienholders to "opt in" for notice of a homeowners' association
18 foreclosure sale.

19 7. In *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home*
20 *Mortg.*, 388 P.3d 970, 972 (Nev. 2017), the Nevada Supreme Court disagreed with
21 *Bourne Valley* by holding that a foreclosure sale under Chapter 116 does not involve
22 sufficient state action to implicate the Due Process Clause of the Fourteenth
23 Amendment. *See id.* The non-prevailing party in *Bourne Valley* petitioned the
24 United States Supreme Court for certiorari on or about April 5, 2017, the non-
25 prevailing party in *Saticoy Bay* has indicated that it will also file for a writ of
26 certiorari.

27 8. The Parties request a stay of litigation to allow the United States
28 Supreme Court to address the certiorari petitions in *Bourne Valley* and *Saticoy Bay*.

1 9. Several judges in this district have stayed similar cases pending the
2 exhaustion of all appeals before the United States Supreme Court. *E.g., Nationstar*
3 *Mtg. LLC v. Green Valley S. Owners Assoc.*, No. 2:16-cv-00883-GMN-GWF (D. Nev.,
4 Oct. 5, 2016); *Bank of America, N.A. v. Canyon Willow Trop Owners' Assoc.*, No. 2:16-
5 cv-01327-GMN-VCF (D. Nev. Oct. 26, 2016); *Deutsche Bank Nat'l Trust Co. v. Copper*
6 *Sands HOA*, No. 2:16-cv-00763-JAD-CWH (D. Nev. Feb. 28, 2017); *Ditech Financial*
7 *Services, LLC v. Highland Ranch Homeowners Assoc.*, No. 3:16-cv-00194-MMD-WGC
8 (D. Nev. Mar. 7, 2017); *Wells Fargo Bank, N.A. v. Las Vegas Dev. Group, LLC*, 2:16-
9 cv-02621-RFB-NJK (D. Nev. Mar. 9, 2017).

10 10. To determine if a continued stay is appropriate, the Court considers (1)
11 any potential damage or prejudice arising from the stay; (2) any potential hardship or
12 inequity that befalls one party more than the other as a result of the stay; and (3) the
13 orderly course of justice. *See Dependable Highway Exp., Inc. v. Navigators Ins. Co.*,
14 498 F.3d 1059, 1066 (9th Cir. 2007) (setting forth factors). Here, the factors support a
15 stay of litigation.

16 a. Damage or Prejudice from Stay: Any potential damage or prejudice
17 arising from a temporary stay in this case would be minimal when
18 balanced against the fees, costs, and time which will be incurred in
19 litigation. The resolution of appeals in *Bourne Valley* and/or *Saticoy*
20 *Bay* could resolve threshold issues pending in this matter and
21 accordingly influence the litigation strategies of the parties. A stay
22 would also ensure that the issues raised in this matter are resolved in a
23 consistent and efficient manner. Moreover, a stay will conserve judicial
24 resources and promote judicial efficiency by preventing potentially
25 unnecessary litigation pending the outcome of the appeals.

26 b. Hardship or Inequity: The Parties agree that any potential hardship or
27 inequity falling on any of them is outweighed by the benefits of a stay, as
28 all parties will benefit from waiting until the appeals are resolved.

1 c. Orderly Course of Justice: At the center of this case is a homeowners'
2 association's foreclosure sale under NRS 116. The outcome of any
3 Supreme Court appellate proceedings in *Bourne Valley* and/or *Saticoy*
4 *Bay* has the potential to resolve threshold issues pending in this matter.
5 Without a stay, the parties will expend resources on litigation involving
6 these cases that could be rendered unnecessary if either or both petitions
7 are granted. A temporary stay would substantially promote the orderly
8 course of justice in this case by preventing unnecessary expenditure of
9 the parties' and the Court's resources pending final resolution of *Bourne*
10 *Valley* and/or *Saticoy Bay*.

11 11. The Parties agree that all proceedings in the instant case, including
12 motion and other litigation deadlines, are stayed pending final resolution of the
13 *Bourne Valley* and/or *Saticoy Bay* certiorari proceedings before the U.S. Supreme
14 Court.

15 12. The Parties agree to submit a status report to the Court every 90 days
16 after the date of an order granting this joint motion.

17 13. The Parties further agree that each report will inform the Court of the
18 status of the certiorari petitions in *Bourne Valley* and *Saticoy Bay*.

19 14. The Parties further agree that each report will inform the Court
20 regarding whether the Parties wish to keep the stay of litigation in place or lift the
21 stay.

22 15. The Parties further agree that if the Court enters the order granting this
23 stipulation, all pending motions shall be denied without prejudice as moot. The
24 Parties may re-file any appropriate motions upon expiration of the stay.

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16. The Parties further agree that any party to this case may independently move to lift the stay at any time.

Dated: April 12, 2017

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ORDER

IT IS SO ORDERED:

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UNITED STATES DISTRICT JUDGE

Dated: April 13, 2017